IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No. 3

Criminal Misc. Application No. 269 of 2003

Sudama Singh Negi and others ---- Petitioners.

Vs.

State of Uttaranchal and another ---- Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri D.S. Mehta learned counsel for the petitioners and Sri R.A. Sambhal larned A.G.A. and perused the record of the petition.

2- This is a petition under section 482 of the Code of Criminal Procedure. The substance of the argument of the learned counsel for the petitioners is that the learned Magistrate passed the summoning order by taking cognizance on 25-8-2003 mechanically without taking into account that the evidence collected during the investigation did not disclose any offence under section 3 (1) (x) of S.C. and S.T. Act. It is admitted that there was cross-version of the occurrence also and in the cross case also charge sheet was filed and the cognizance had already been taken by the learned Magistrate. Having gone through the material on record it is evidence that the witnesses have levelled allegations of commission of offence under the above provisions also and there appear to be no illegality in the order dated 25-8-2003 passed by the learned Magistrate.

3- It will be open to the petitioner to argue before the learned Sessions Judge, at the time of framing of charge under section 227/228 of the Code of Criminal Procedure, that there is no evidence to saddle the petitioners/accused with the responsibility of commiting the offence punishable under section 3 (1)(x) of the S.C. and S.T. Act and that will be the appropriate stage when the learned Sessions Judge may take notice of submissions and may, if satisfied, not frame charge under that provision against the petitioners and may even decide to remit the case back to the Magistrate for trial of the offences cognizance by the Magistrate.

4- At this stage there being no merit in this petition, the same is liable to be dismissed. The petition is dismissed in limine.

Dated: 7.11.2003 **(Irshad Hussain, J.)**

ISB